



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AR#99-14

November 24, 1999

Audit Referral 99-20

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: MCCORMICK FOR CONGRESS - REFERRAL MATTER

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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On November 15, 1999, the Commission approved the Final Audit Report on McCormick for Congress (MFC). The report was released to the public on November 23, 1999. As a result, the following finding from the final audit report is being referred to your office:

II.A. Receipt of Excessive Contributions from Individuals. MFC received 16 contributions from 14 individuals which exceeded the contribution limitations by \$8,800.

MFC's response notes its confusion over contribution limitations and acknowledges that some of these excessive contributions resulted from the absence of a spouse's signature on the check or accompanying letter. The response notes that funds are not currently available to make the necessary refunds and they will be carried by MFC as debt. It is the opinion of the Audit staff that pursuing this as a compliance matter may not constitute the most efficient use of Commission resources.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Philomena Brooks or Alex Boniewicz at 694-1200.

Attachment:
Finding II.A., FAR Pgs. 5-7.

A. RECEIPT OF EXCESSIVE CONTRIBUTIONS FROM INDIVIDUALS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal Office which, in the aggregate exceed \$1,000. Subsection (b) of 11 CFR §110.1 explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made. A contribution is considered made when the contributor relinquishes control over the contribution by delivering the contribution to the Candidate, the political committee, or an agent of the committee. A contribution mailed is considered made on the date of the postmark.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be either deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(b)(5) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1). A contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request a refund of the contribution and within 60 days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a signed redesignation of the contribution for another election.

Section 110.1(1)(5) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee does not retain the written records concerning redesignations or reattributions, the redesignation or reattribution shall not be effective and the original designation or attribution shall control.

The Audit staff's review of contributions identified 16 apparent excessive contributions totaling \$8,800 from 14 individuals. No evidence was found that MFC attempted to contact these contributors for the purpose of obtaining reattributions or redesignations. Although MFC did not deposit these excessive contributions into a separate account it did maintain sufficient funds during most of the audit period to refund the contributions. The cash on hand balance at December 31, 1998, however, was only \$6,001 (see Finding II.E.).

At the exit conference, the Audit staff provided the MFC's representative with a schedule detailing the apparent excessive contributions. During a subsequent telephone conversation, the Candidate indicated that refunds would be made, but sufficient funds may not be immediately available.

The interim audit report recommended that MFC provide evidence that demonstrated the contributions noted above were not in excess of the limitation. Absent such evidence, it was recommended that MFC refund these contributions and provide evidence of such refunds. If funds were not immediately available to make the necessary refunds, those contributions requiring refunds were to be disclosed as debts on Schedule D (Debts and Obligations) until such time that funds become available to make the refunds.

In its response to the interim audit report, the Candidate notes that \$1,400 of the excessive contributions were made following the completion of the election in an attempt to retire the debt. MFC was under the mistaken belief that these funds would not be counted toward the donor's \$1,000 limit. An additional \$4,000 were excessive because the spouse of a donor had not signed the check or accompanying letter to properly attribute the contribution to each spouse. The Candidate states that funds are not currently available to make the refunds and that these excessive contributions will be carried as debt by MFC. Schedules D, which disclose the debt resulting from these excessive contributions, were included with the latest report filed by MFC.